

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY  
10/23/2001

\*\*\* FILED \*\*\*  
10/29/2001  
CLERK OF THE COURT  
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza  
Deputy

LC 2001-000109

Docket Code 512 Page 1  
FILED: \_\_\_\_\_

STATE OF ARIZONA  
v.  
THOMAS MONREAL ESPINOZA

B DON TAYLOR  
JEREMY PHILLIPS

PHX CITY MUNICIPAL COURT  
REMAND DESK CR-CCC

MINUTE ENTRY

PHOENIX CITY COURT  
Cit. No. #5714487

Charge:       1. DUI-ALCOHOL  
                  2. DUI WITH AC - .10  
                  3. FAILED TO YIELD LEFT TURN AT INTERSECTION  
                  4. FAILED TO DRIVE IN ONE LANE

DOB: 12/21/51  
DOC: 11/18/99

This Court has jurisdiction of this appeal pursuant to the  
Arizona Constitution Article VI, Section 16, and A.R.S. Section  
12-124(A).

This matter has been under advisement since the time of Oral Argument on October 15,  
2001. This decision is made within 30 days as required by Rule 9.8, Maricopa County  
Superior Court Local Rules of Practice. This Court has considered the argument and  
Memoranda of counsel, and the record of the proceedings from the Phoenix City Court.

Appellant, Thomas Monreal Espinoza, was charged on November 16, 1999 with Driving  
While Under the Influence of Intoxicating Liquor, a class 1 Misdemeanor in violation of  
A.R.S. Section 28- 1381(A)(1); Driving with a Blood Alcohol Level in excess of .10, a  
class 1 Misdemeanor in violation of A.R.S. 28-1381(A)(2); Failure to Yield Left Turn at  
an Intersection, a Civil Traffic violation in violation of A.R.S. 28-772; Failure to Drive  
Within One Lane, a Civil Traffic violation in violation of A.R.S. 28-729.1.

Appellant's case was scheduled for trial February 14, 2001. The day prior to trial (Appellant's Motion to Dismiss is dated February 13, 2001) Appellant filed a Motion to Dismiss. The State moved to strike the motion as untimely. The trial judge granted the State's motion and ordered that Appellant had waived the issue by filing the motion in an untimely fashion. The parties there upon waived their rights to a jury trial and submitted the case to the court. Appellant was found guilty and responsible on all charges. Appellant was ordered to spend ten (10) days in jail and six (6) days were suspended pending completion by Appellant of a substance abuse screening program. Appellant was ordered to pay fines of \$443.00 and \$110.00. Appellant filed a timely Notice of Appeal in this case.

The only issue raised by Appellant on appeal is if the trial judge abused her discretion in denying Appellant's Motion to Dismiss as untimely.

Rule 16.1(a), Arizona Rules of Criminal Procedure provides:

**Scope of Rule.** This rule shall govern the procedure to be followed in cases between arraignment and trial, unless specifically provided by another rule. Rule 16.1 and 16.2 shall apply to criminal proceedings in all courts. (emphasis added).

And, Rule 16.1(b), Arizona Rules of Criminal Procedure, provides in part:

All motions shall be made no later than 20 days prior to trial, or at such other time as the court may direct. The opposing party shall have 10 days within which to file a response, unless the opposing party waives response. Lack of jurisdiction may be raised at any time.

Appellant's motion was filed the day prior to trial. This late filing precluded the State from exercising its right to file a response in writing to Appellant's motion. Rule 16.1(c), Arizona Rules of Criminal Procedure, provides:

**Effect of failure to make motions in timely manner.** Any motion, defense, objection, or request not timely raised under Rule 16.1(b) shall be precluded, unless the basis therefore was not then known, and by the exercise of reasonable diligence could not then had been known, and the party raises it promptly upon learning of it.

This rule provides for preclusion of issues not raised at least 20 days prior to trial. The trial judge properly applied Rule 16.1(c), Arizona Rules of Criminal Procedure, to the Motion to Dismiss filed by Appellant on the date prior to trial.

The time limits provided for in Rule 16, Arizona Rules of Criminal Procedure, also apply to motions which raise constitutional issues.<sup>1</sup> Though Appellant raised a constitutional issue (alleged violation of the right to counsel) the trial judge did not err in precluding

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<sup>1</sup> *State v. Griffen*, 117 Ariz. 54, 570 P.2d 1067 (1977); *State v. Neese*, 126 Ariz. 499, 616 P.2d 959 (App. 1980).

this motion as untimely as required by Rule 16.1(c), Arizona Rules of Criminal Procedure.

IT IS THEREFORE ORDERED affirming the judgments and sentences imposed by the Phoenix City Court.

IT IS FURTHER ORDERED remanding this case back to the Phoenix City Court for all future proceedings.